

## REMARKS

This responds to the Office Action mailed on December 13, 2006.

Claims 1, 3, 5, 34-37, and 39-40 have been amended. Claims 41-46 have been added. No claims are canceled by way of this amendment. Thus, claims 1-6 and 34-46 are now pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

### Amendments to Claims 1, 3, 5, 34-37, and 39-40

Independent claims 1, 34, and 37 have been amended by inserting "frequency modulation (FM)" before "radio frequency (RF) transmitter", by inserting "FM" before "carrier signal" (two instances), by deleting "RF" (two instances), and by adding the phrase "within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which the sound generation device is currently located".

Claim 1 has been further amended by substituting "non-interfering" for "optimum" (two instances).

Claims 3 and 37 have been amended by adding "non-interfering".

Claim 5 has been amended by adding "non-interfering" and by substituting "FM" for "RF".

Claim 34 has been further amended by adding "non-interfering", by substituting "FM" for "RF", by adding "non-interfering FM", and by adding "in the form of an FM carrier frequency".

Claims 35 and 39 have been amended by substituting "FM" for "RF".

Claims 36 and 40 have been amended by inserting the phrase "a digital music player".

No new matter has been introduced.

### **New Claims 41-46**

New claims 41-46 have been added to provide Applicant with additional protection to which Applicant is entitled. New claims 41-46 are supported by the original disclosure. No new matter has been introduced.

Support for these claims may be found, for example, in FIG. 4 and the corresponding written description, and in the original description at page 15, line 3 through page 16, line 6.

### **Rejection of Claims 1, 2, 4-6, and 37-40 under 35 U.S.C. §102(b) as Clearly Anticipated by Noreen**

Claims 1, 2 (presumably), 4-6, and 37-40 were rejected under 35 U.S.C. §102(b) as being clearly anticipated by Noreen et al. (U.S. 5,455,823).

The rule under 35 U.S.C. §102 is well settled that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2D 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131.

Regarding amended independent claims 1 and 37, Noreen does not appear to disclose *inter alia* a frequency modulation (FM) radio frequency (RF) transmitter, coupled to the audio source, to transmit an FM carrier signal modulated with the audio signal, the FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which the sound generation device is currently located (as recited in Applicant’s claims 1 and 37).

Furthermore, although one passage (col. 12, lines 44-61) referred to by the Examiner describes “look-up tables”, these do not appear to comprise a database of non-interfering carrier frequencies arranged by geoposition. Nothing in Noreen’s look-up tables refers to a “geoposition”, which term is not defined within Applicant’s written disclosure, but which one of ordinary skill in the art would understand to comprise geographical position or coordinate values, such as longitude and latitude values. (See, e.g., U.S. Pat. No. 5,844,521 and 6,281,970, which define “geoposition” as comprising longitude and latitude values for an associated user terminal or station.)

For the above reasons, independent claims 1 and 37 should be found to be allowable over Noreen, and Applicant respectfully requests that the rejection of claims 1 and 37 under 35 U.S.C. §102(b) as anticipated by Noreen be withdrawn.

Claims 2 and 4-6, which depend from claim 1 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 38-40, which depend from claim 37 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Rejection of Claims 3 and 34-36 under 35 U.S.C. §103(a)**  
**as Unpatentable over Noreen in view of Lehtonen**

Claims 3 and 34-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Noreen et al. in view of Lehtonen (U.S. 2001/0049262).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

The asserted combination of Noreen in view of Lehtonen fails to teach or suggest all of the claim limitations present in independent claims 1 and 34, as amended, so a *prima facie* case of obviousness has not been established.

For example, neither Noreen nor Lehtonen disclose *inter alia* a frequency modulation (FM) radio frequency (RF) transmitter, coupled to the audio source, to transmit an FM carrier signal modulated with the audio signal, the FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which the sound generation device is currently located (as recited in Applicant's claims 1 and 34).

For the above reasons, independent claims 1 and 34 should be found to be allowable over any combination of Noreen and Lehtonen, and Applicant respectfully requests that the rejection of claims 1 and 34 under 35 U.S.C. §102(b) as unpatentable over Noreen in view of Lehtonen be withdrawn.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claim 3, which depends from claim 1 and incorporates all of the limitations therein, is also asserted to be allowable for the reasons presented above.

Claims 35-36, which depend from claim 34 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

### **Patentability of New Claims 41-46**

New claims 41-46 are asserted to be patentable over the art of record, which fails to disclose all of the elements recited in independent claim 41. For example, the art of record fails to disclose a channel locator controller to identify an available non-interfering carrier frequency for an FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which a portable electronic device is currently located.

### **Additional Elements and Limitations**

Applicant considers additional elements and limitations of the claims to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. §1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are

relevant to the present claims, or that they constitute prior art. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP §821.04.

### **Conclusion**

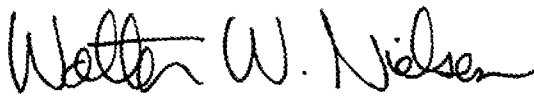
Applicant respectfully submits that claims 1-6 and 34-46 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Ann M. McCrackin (located in Minneapolis, Minnesota) at (612) 349-9592 or Applicant's below-signed attorney (located in Phoenix, Arizona) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By /  /

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